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14 Attorneys for Plaintiff
15 **CRAIG WITT**

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 **CRAIG WITT**, on behalf of himself, all other
19 persons similarly situated and the general
20 public,

21 Plaintiff,

22 vs.

23 **NCO FINANCIAL SYSTEMS, INC.**, an
24 Delaware corporation

25 Defendant.

Case No.

11CV1632 JAH JMA

CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

BY FAX

26 Plaintiff Craig Witt by his attorneys, on behalf of himself, all other persons similarly situated
27 and the general public, alleges upon personal knowledge as to himself and his acts stated herein, and
28 as to all other matters upon information and belief upon, as follows:

INTRODUCTION

29 L. Plaintiff Craig Witt (or "Plaintiff") brings this action for damages, and any other
30 available legal or equitable remedies, resulting from the actions of Defendant NCO Financial
31 Systems, Inc. (hereinafter "Defendant" or "NCO"), in negligently, knowingly, and/or willfully
32 contacting Plaintiff on his cellular telephone, in violation of the Telephone Consumer Protection Act,
33 47 U.S.C. § 227 *et seq.*, ("TCPA"), thereby invading Plaintiff's privacy.

1 **JURISDICTION AND VENUE**

2 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff seeks up to
3 \$1,500 in damages for each call in violation of the TCPA, which exceeds the \$5,000,000.00
4 threshold for federal court jurisdiction. Further, Plaintiff alleges a national class, which will involve
5 more than 100 persons and at least one class member belonging to a different state. Therefore, both
6 elements of diversity jurisdiction under the Class Action Fairness Act of 2005 ("CAFA") are present,
7 and this Court has jurisdiction.

8 3. Venue is proper in the United States District Court for the Southern District of
9 California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because the events giving rise to Plaintiff's
10 causes of action against Defendant occurred within the State of California and the County of San
11 Diego.

12 **PARTIES**

13 4. Plaintiff Craig Witt is an adult residing in the County of San Diego, California, which
14 is within this judicial district. At all times relevant, Plaintiff was an individual residing within the
15 State of California. On numerous occasions within a year prior to the filing of this Complaint,
16 Plaintiff was contacted by NCO on his cellular telephone via an "automatic telephone dialing
17 system," as defined by 47 U.S.C. § 227(a)(1). During these telephone calls, NCO used "an artificial
18 or prerecorded voice" as prohibited by 47 U.S.C. § 227(b)(1)(A). Plaintiff's telephone number
19 NCO called was assigned to a cellular telephone service for which Plaintiff incurs a charge for
20 incoming calls as described in 47 U.S.C. § 227(b)(1). Plaintiff did not provide express consent to
21 NCO to receive calls on Plaintiff's cellular telephone, pursuant to 47 U.S.C. § 227(b)(1)(A).

22 5. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all
23 times mentioned herein, was a corporation whose primary corporate address and headquarters is
24 Horsham, Pennsylvania, and that Defendant does business in the County of San Diego.

25 **CLASS ACTION ALLEGATIONS**

26 6. Plaintiff brings this action on behalf of himself and on behalf of and all others
27 similarly situated defined as all persons within the United States who received any telephone call
28 from NCO to said person's cellular telephone through the use of any automatic telephone dialing

1 system or an artificial or prerecorded voice, from September 12, 2008 to the date of trial ("the
2 Class"). NCO, its shareholders, officers, directors, employees and agents are excluded from the
3 Class.

4 7. Plaintiff does not, as yet, know the exact size of the Class. Based upon the nature of
5 NCO's business, Plaintiff believes that there are more than 100 Class members, and that Class
6 members are geographically dispersed throughout the United States. Thus, the Class is sufficiently
7 numerous to make joinder impracticable, if not completely impossible. The disposition of the claims
8 of all members of the Class in a class action will benefit both the parties and the Court.

9 8. Plaintiff and members of the Class were harmed by the acts of NCO in at least the
10 following ways: (a) Defendant illegally contacted Plaintiff and Class members via their cellular
11 telephones thereby causing Plaintiff and Class members to incur certain cellular telephone charges
12 or reduce cellular telephone time for which Plaintiff and Class members previously paid; (b) by
13 having to retrieve or administer messages left by Defendant during those illegal calls, and (c)
14 invading the privacy of said Plaintiff and Class members. Plaintiff and the Class were damaged by
15 such acts.

16 9. Plaintiff reserves the right to expand the Class' definition to seek recovery on behalf
17 of additional persons as warranted as facts are learned in further investigation and discovery.

18 10. There is a well-defined community of interest in the questions of law and fact
19 involved affecting the parties to be represented. The questions of law and fact to the Class
20 predominate over questions which may affect individual Class members, including the following:

21 a. Whether, within one year prior to the filing of this Complaint, Defendant made any
22 call (other than a call made for emergency purposes or made with the prior express
23 consent of the called party) using any automatic telephone dialing system or an
artificial or prerecorded voice to any telephone number assigned to a cellular
telephone service.

24 b. Whether Plaintiff and the Class were damaged thereby, and the extent of damages for
25 such violation; and

26 c. Whether Defendant should be enjoined from engaging in such conduct in the future.

27 11. As a person that received numerous calls using an automatic telephone dialing system
28 or an artificial or prerecorded voice, without Plaintiff's express prior consent, Plaintiff is asserting

1 claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the
2 interest of the Class in that Plaintiff has no interests antagonistic to any member of the Class. In
3 addition, Plaintiff has retained competent counsel experienced in class action litigation to further
4 ensure such protection and intend to prosecute this action vigorously.

5 12. Plaintiff and the members of the Class have all suffered irreparable harm as a result
6 of the Defendant's unlawful and wrongful conduct. Absent a class action, the Class will continue
7 to face the potential for irreparable harm. In addition, these violations of law will be allowed to
8 proceed without remedy and Defendant will likely continue such illegal conduct. Because of the size
9 of the individual Class member's claims, few, if any, Class members could afford to seek legal
10 redress for the wrongs complained of herein.

11 13. The prosecution of separate actions by individual members of the Class would create
12 a risk of inconsistent or varying adjudications with respect to individual members of the Class, which
13 would establish incompatible standards of conduct for the Defendant in California and the United
14 States and would lead to repetitious trials of the numerous common questions of fact and law in
15 California and the United States. Plaintiff know of no difficulty that will be encountered in the
16 management of this litigation that would preclude its maintenance as a class action. As a result, a
17 class action is superior to other available methods for the fair and efficient adjudication of this
18 controversy.

19 14. Proper and sufficient notice of this action may be provided to the Class members by
20 direct mail and/or through notice published on the Internet, in television, radio, and/or print media
21 outlets, and/or at on Defendant's web sites.

22 15. Moreover, the Plaintiff's and the Class' individual damages are insufficient to justify
23 the cost of litigation, so that in the absence of class treatment, Defendant's continuing violations of
24 law inflicting substantial damages in the aggregate would go unremedied without certification of the
25 Class. Class-wide damages are essential to induce Defendant to comply with federal and California
26 law. Moreover, absent certification of his action as a class action, Plaintiff and the members of the
27 Class will continue to be damaged, thereby allowing these violations of law to proceed without a
28 remedy.

16. Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

FACTUAL ALLEGATIONS

17. At all relevant times, Plaintiff and the Class are, and at all times mentioned herein were, "persons" as defined by 47 U.S.C. § 153(10).

18. NCO is, and at all times mentioned herein was, a corporation and a "person," as defined by 47 U.S.C. § 153(10).

19. On numerous times, within one year prior to the date this Complaint was filed, NCO contacted Plaintiff and the Class on their cellular telephone via an "automatic telephone dialing system," as defined by 47 U.S.C. § 227(a)(1).

20. During these telephone calls, NCO used "an artificial or prerecorded voice" as prohibited by 47 U.S.C. § 227(b)(1)(A).

21. The telephone numbers of Plaintiff and the Class called by NCO were assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls as defined by 47 U.S.C. § 227(b)(1).

22. The telephone calls made to Plaintiff and the Class by NCO constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

23. Plaintiff and the Class did not provide express consent to NCO to receive calls on Plaintiff's and the Class' cellular telephones, pursuant to 47 U.S.C. § 227(b)(1)(A).

24. As a result, the telephone calls made to Plaintiff and the Class by NCO were in violation of 47 U.S.C. § 227(b)(1).

FIRST CAUSE OF ACTION (Negligent Violations of the Telephone Consumer Protection Act 47 U.S.C. § 227 *et seq.*) (Against All Defendants)

25. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

26. The foregoing acts and omissions of NCO constitute numerous and multiple negligent

1 violations of the TCPA, including but not limited to each and every one of the above-cited provisions
2 of 47 U.S.C. § 227 *et seq.*

3 27. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and
4 the Class members are entitled to an award of \$500.00 in statutory damages, for each and every
5 violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

6 28. Plaintiff and the Class members are also entitled to and seek injunctive relief
7 prohibiting such conduct in the future.

8 **SECOND CAUSE OF ACTION**
9 **(Knowing and/or Willful Violations of the Telephone Consumer Protection Act**
10 **47 U.S.C. § 227 *et seq.*)**
11 **(Against All Defendants)**

12 29. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as
13 though fully stated herein.

14 30. The foregoing acts and omissions of NCO constitute numerous and multiple knowing
15 and/or willful violations of the TCPA, including but not limited to each and every one of the above-
16 cited provisions of 47 U.S.C. § 227 *et seq.*

17 31. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et*
18 *seq.*, Plaintiff and each of the Class members are entitled to treble damages, as provided by statute,
19 up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C.
20 § 227(b)(3)(C).

21 32. Plaintiff and the Class members are also entitled to and seek injunctive relief
22 prohibiting such conduct in the future.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff respectfully request the Court grant Plaintiff and the Class members
25 the following relief against Defendant:

26 1. That this action be certified as a class action on behalf of the proposed plaintiff Class
27 and the Plaintiff be appointed as the representatives of the Class;

28 2. As a result of Defendant's negligent violation of 47 U.S.C. § 227(b)(1), Plaintiff seeks
for himself and each Class member \$500.00 in statutory damages, for each and every violation,

1 pursuant to 47 U.S.C. § 227(b)(3)(B).

2 3. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in
3 the future.

4 4. As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1),
5 Plaintiff seeks for himself and each Class member treble damages, as provide by statute, up to
6 \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §
7 227(b)(3)(C).

8 5. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in
9 the future.

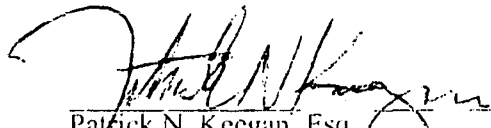
10 6. Prejudgment and post judgment interest as provided by statute;

11 7. Attorneys' fees, expenses, and costs of this action pursuant to statute; and

12 8. Such further relief as this Court deems necessary, just, and proper.

13 Dated: July 25, 2011

KEEGAN & BAKER, LLP

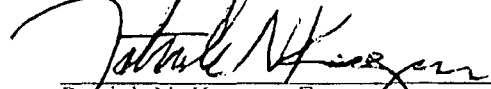
14 
15 Patrick N. Keegan, Esq.
16 e-mail: pkeegan@keeganbaker.com
17 Attorneys for Plaintiff Craig Witt
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DEMAND FOR JURY TRIAL

Plaintiff and the Class hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

Dated: July 25, 2011

KEEGAN & BAKER, LLP



Patrick N. Keegan, Esq.
e-mail: pkeegan@keeganbaker.com
Attorneys for Plaintiff Craig Witt

ORIGINAL

JS-41 (Rev. 12-07)

CIVIL COVER SHEET BY FAX

The JS-41 civil cover sheet and the information contained hereon neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required to be filed with the U.S. District Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CRAIG WITT, on behalf of himself, all other persons similarly situated and the general public;

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Patrick N. Keegan, Esq. (SBN 167698), KEEGAN & BAKER, LLP
6870 Embarcadero Lane, Carlsbad, CA 92011; Tel (760) 929-9303

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC., a Delaware corporation

County of Residence of First Listed Defendant Montgomery PA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

11CV1632 JAH JMA**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ Federal Question yeb
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ Diversity yeb
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ PTF DEF ☒ Incorporated or Principal Place of Business in This State ☐ PTF DEF ☐
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☒ -yeb
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 380 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 390 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 430 Copyrights	<input type="checkbox"/> 400 Bankruptcy and Bankruptcy
<input type="checkbox"/> 140 Negotiable Instruments	<input type="checkbox"/> 320 Assault, Tame, & Stabbing	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 440 Patent	<input type="checkbox"/> 410 Consumer Credit
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employees' Liability	<input type="checkbox"/> 640 R.R. & Trust	<input type="checkbox"/> 450 Trademark	<input type="checkbox"/> 420 Deportation
<input type="checkbox"/> 161 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Antitrust Regs.	<input type="checkbox"/> 460 Labor	<input type="checkbox"/> 430 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Delinquent Student Loans (incl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety Health	<input type="checkbox"/> 470 Social Security	<input type="checkbox"/> 440 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 670 Other	<input type="checkbox"/> 480 Labor	<input type="checkbox"/> 450 Selective Service
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> LABOR	<input type="checkbox"/> 490 Labor	<input type="checkbox"/> 460 Securities Commodities Exchange
<input type="checkbox"/> 170 Other Contracts	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 500 Labor	<input type="checkbox"/> 470 Securities Commodities Exchange
<input type="checkbox"/> 175 Contract Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 720 Labor Mgmt. Relations	<input type="checkbox"/> 510 Labor	<input type="checkbox"/> 480 Securities Commodities Exchange
<input type="checkbox"/> 180 Franchise	<input type="checkbox"/> 375 Think in Ending	<input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 520 Labor	<input type="checkbox"/> 490 Securities Commodities Exchange
	<input type="checkbox"/> 380 Other Personal Injury Product Liability	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 530 Labor	<input type="checkbox"/> 500 Securities Commodities Exchange
	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 750 Other Labor Litigation	<input type="checkbox"/> 540 Labor	<input type="checkbox"/> 510 Securities Commodities Exchange
	<input type="checkbox"/> 390 Property Damage	<input type="checkbox"/> 761 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 550 Labor	<input type="checkbox"/> 520 Securities Commodities Exchange
	<input type="checkbox"/> 395 Other Civil Rights	<input type="checkbox"/> IMMIGRATION	<input type="checkbox"/> 560 Labor	<input type="checkbox"/> 530 Securities Commodities Exchange
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			<input type="checkbox"/> 990 Labor	<input type="checkbox"/> 960 Labor

V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Case the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity) 28 U.S.C. section 1332(d)(2)

Brief description of cause: Contacting Plaintiff on his cellular telephone via an automatic telephone dialing system.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐ DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE Thomas J. WhelanDOCKET NUMBER 3:07-cv-01413-W-AJB

DATE

07/25/2011

FOR OFFICE USE ONLY

RECEIPT

28679

AMOUNT

\$350

APPLYING FOR

Mr 7/25/11

JUDGE

MAG JUDGE

CR

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS028679
Cashier ID: kdelabar
Transaction Date: 07/25/2011
Payer Name: RAPID LEGAL

CIVIL FILING FEE

For: WITT V. NCO FNCL
Case/Party: D-CAS-3-11-CV-001632-001
Amount: \$350.00

CHECK

Check/Money Order Num: 41705
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.